Ministry of
Municipal Affairs
and Housing

Ontario

THE
PLANNING
ACT

GUIDELINE 7

Planning
Application Fees

August 1983

1 INTRODUCTION

This guideline is intended to help municipalities establish a tariff of fees for the processing of planning applications as provided for in section 68 of the Planning Act, S.O. 1983.

Application fees for zoning by-laws, subdivision plans, official plan amendments and other kinds of development applications are common in many municipalities, although no legislative basis formerly existed for the charging of these fees.

Although there appears to be a general acceptance of the principle that municipalities should be able to charge fees, municipal councils may wish to consider the processing of planning applications as a municipal service to be financed out of general taxes rather than charging a fee. Further, it is recognized that fees for planning applications can also affect the resulting cost of housing, office space and industrial development. It is important, therefore, that municipalities carefully review and consider the impact of a tariff of fees by-law and the level of the proposed fees, in light of local market conditions in order to devise an equitable and realistic fee structure.

The only basis for charging application fees is through a municipal by-law passed under section 68 of the Planning Act, S.O. 1983.

The legislative provisions, policy matters and municipal requirements related to application fees are set down to help those municipalities that choose to pass such by-laws.

2 BACKGROUND

Throughout the review of the municipal planning process it became apparent that fees for planning applications should be permitted. However, views differed on how the fees should be determined and what legislative provisions would be needed.

One of the underlying principles of section 68 is that the fees established by municipalities are to meet only "the anticipated cost... of the processing of each type of application". Tariff by-laws should not be viewed as a means to raise revenue or increase municipal services, and should not be confused with impost fees or lot levies required by many municipalities. The processing of development proposals must be viewed as being part of the standard services provided by municipalities.

It was recognized that the legislation should not prescribe the actual fees to be charged. It is more appropriate for municipalities to prepare their own tariff of fees based on their own actual costs because conditions vary so much across the province.

3 THE LEGISLATION

The intent of section 68 of the Planning Act is self-explanatory. The legislation provides a simple, straight-forward way of establishing application fees, while at the same time permitting municipalities the flexibility to tailor a by-law to their own municipal review and approval process.

The following is a synopsis of the legislative highlights for the four subsections that comprise section 68:

Section 68(1)
- a municipal council may pass a by-law prescribing a tariff of fees relating to the processing of planning applications;

- the tariff must only apply to the anticipated cost of processing a planning application;
- a municipal council, through its tariff by-law, may set the fees to be charged by its committee of adjustment and land division committee;
- no approval of the by-law, beyond that of municipal council, is required.

Section 68(2)
- the fee set by by-law may be reduced or waived entirely in specific cases or a specific application where this is considered appropriate;
- the use of this option must be made by the body empowered to approve the application (i.e. council, committee of adjustment, land division committee) and should be done in the form of a resolution or decision of the appropriate body.

Section 68(3)
- a person may pay a fee under protest and appeal the amount in writing to the OMB within 30 days of paying the fee.

Section 68(4)
- the OMB must hold a hearing on an appeal;
- the Board can dismiss the appeal or direct a refund be made and its decision is final.

4 TARIFF OF FEES BY-LAWS

Municipal Actions

In the development of the fee structure to be included in the tariff of fees by-law, municipal councils should consider a consultation and review process. Actions that a council may wish to consider are:

- a historical review of costs incurred in processing planning applications;
- a review of costs presently incurred in processing the various types of planning applications;
- consultation with the senior planning and financial officers and municipal solicitor;
- consultation with the municipal committee of adjustment and land division committee on matters under their jurisdiction;
- consultation with the planning board (northern Ontario);
- consultation with residents of the community;
- consultation with the development industry working within the municipality.

Basis for Establishing Fees

During a municipal council's consideration of a tariff of fees by-law, the following points should be kept in mind:

- the fees established should only apply to a planning matter which requires an application to be made and results in some form of municipal review or approval process;

- the fees should only relate to the costs incurred by a municipality in processing a planning application;

- the fees should primarily be based on the staff time and associated costs needed to carry out the review of a planning application by the municipality;

- the fees should only relate to the cost incurred in processing the application during the time period leading up to a decision by council, including post notification;

- the fees should be reasonable and defensible as they can be challenged resulting in an appeal to the OMB.

In establishing a tariff of fees by-law, municipal councils should carefully consider whether subsequent costs should be charged, as a result of an OMB hearing. Where there is a dispute between an applicant and the municipality, it is unfair to require the applicant to pay a fee as the municipality would be in a position to recover its costs no matter what the decision was. More importantly, to permit OMB costs to be included in a tariff of fees by-law would conflict with the Board's jurisdiction to award costs where it is felt appropriate. On the other hand, where the applicant and the municipality are in agreement on an application and the municipality is in effect making the request to the OMB on behalf of the applicant, then recovery of some part of the municipal cost through an application fee seems reasonable.

5 BY-LAW CONTENT

The exact content of municipal tariff of fees by-law will vary depending on the individual circumstances existing in a municipality. The following matters should be considered for inclusion in a tariff of fees by-law:

Types of applications

- municipalities should clearly specify the types of planning applications that the tariff of fees by-law will apply to (i.e. zoning by-law amendments, minor variance, etc.);

- matters not included in the by-law cannot be the subject of a fee.

Classification of applications

- municipalities may wish to devise ways of applying specific fees for different classes of applications (e.g. simple/complex, minor/major); this would be useful in order to establish an equitable distribution of costs, recognizing the different demand made on municipal staff services by particular development applications. For example, a lower fee would be appropriate for a single family "spot zoning" amendment as opposed to a major amendment for a shopping centre.

Processing steps

- a tariff of fees by-law should be based on the specific functions of the municipal review and approval process for which fees will be charged (this may be included in a schedule to the by-law);

- although the planning process may vary somewhat from municipality to municipality, councils should consider the basic steps established in the Act and associated Regulations (i.e. notice, review, consultation, public meeting, council decision);

- the processing steps relate to the normal review functions performed internally by the municipality;

- additional matters that are part of an individual municipality's planning review process should be set out in the by-law.

Fees and associated methods of charging fees

- a tariff of fees by-law by definition must stipulate a fixed fee in respect of each application specified;

- in establishing a fixed fee, municipalities may wish to charge a flat fee (e.g. minor variance $150.00) or a fee based on a time consumed basis (e.g. minor variance $25.00 per hour or $75.00 per day) or an average fee based on costs incurred in the past (e.g. minor variance $200.00)*;

- whichever manner (e.g. fixed, per hour, average, per diem, etc.) a municipality chooses as a basis for fees, the tariff by-law must clearly set it out;

- fees may also be established based on the classification of applications set out in the by-law (i.e. single family zoning amendment $400.00, major commercial zoning amendment $1,000.00)*;

- other costs that a municipality wishes to charge for, such as disbursements, must also be specified in the by-law.

6 FEES CHARGED BY PLANNING BOARDS (NORTHERN ONTARIO)

Section 68 of the new Act does not empower planning boards in northern Ontario to charge fees. Ontario Regulation # 481/83, passed pursuant to subsection 69(d) of the Act provides Planning Boards with the same authority. Prior to passing a tariff of fees by-law pursuant to Ontario Regulation # 481/83, planning boards should consider the matters set out in this Guideline.

7 CONCLUSION

The provisions and principles established by section 68 of the Planning Act allow municipalities enough flexibility to devise a tariff of fees by-law to meet their specific needs. The appeal mechanism established in subsection 68(3) means that municipal councils should carefully consider the content and resulting fee structure. Prior to passing a tariff of fees by-law, consultation with your municipal solicitor and other appropriate municipal officials should occur.

*These figures are provided for illustrative purposes only. They do not reflect actual calculated costs and should not be used as standards.

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2. Local Planning in Northern Ontario (January 1983)
3. Delegation of Minister's Authority (January 1983)
4. Community Improvement (March 1983)
5. Working with the New Regulations (August 1983)
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